IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3173 of 1981

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE K.R.VYAS

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

---

JAWAHAR KAKUBHAI KESARIA,

Versus

THE STATE OF GUJARAT (NOTICE TO BE SERVED UPON THE

---

Appearance:
MR BP TANNA for Petitioner
MS MANISHA LAVKUMAR., AGP for Respondent Nos.1 & 2
MR YN OZA for Respondent No. 3, 5
MR SB VAKIL for Respondent No. 4

---

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE K.R.VYAS

Date of decision: /06/2001

C.A.V. JUDGEMENT

(Per : MR.JUSTICE K.R.VYAS)

#. The petitioner, a councillor of Jamnagar Municipality, in this petition, challenges grant of land forming part of Survey No.8 of Jamnagar, admeasuring 1000 Sq.Ft. situated in front of Summair Club by respondent nos.1 and 2 -the State Government and Collector respectively in favour of respondent no.3 on the ground that the land has been transferred in surreptitious and nepotic manner, as the respondent no.3 being the wife of MLA and therefore it is against the public interest. It is the contention of the petitioner that the land in question situated within the limit of respondent no.4 -Municipality and forms part of the public road or street in front of Summair Club and linking two State Highways. On the public road of which the land in question forms part, there are numerous hospitals, office buildings, S.T.Depot etc. and therefore the land in question being a part of the road is required to be kept open from the point of view of the future development and planning of the city and therefore the same cannot be transferred to any private person.

#. Mr.Tanna, learned counsel appearing for the petitioner, after having taken us through the petition as well as the reply affidavit, submitted that the land bearing Survey No.8 vested in the Municipality all through out a part of the Municipality and therefore the same cannot be transferred in any manner by the Government to any private person. In the submission of learned counsel, the land is part of public street and, therefore, it is required to be kept open for future development and planning of Jamnagar city. Mr.S.B.Vakil, learned counsel appearing for the respondent no.4 Municipality supported the cause of the petition by adopting submission advanced on behalf of the petitioner. On the other hand, Ms. Manisha Lovkumar, learned AGP, appearing for respondent nos.1 and 2 and Mr.Y.N.Oza, learned counsel appearing for respondent nos.3 and 5 while opposing the petition supported the impugned decision by contending that the land in question is part of the Government land and therefore the Government was empowered to dispose of the land as per its prevailing policy.

#. In order to appreciate the challenge in this petition, it is necessary to refer to certain facts. Respondent No.4 is a Municipality constituted under Section 5 of the Gujarat Municipalities Act, 1963 ( now it is a Municipal Corporation constituted under the Bombay Provincial Municipal Corporations Act, 1949). Respondent no.4 Municipality was formerly a Borough

Municipality as contemplated by Section 8 of the Bombay Municipal Boroughs Act, 1925. The disputed land i.e. Survey No.8 according to the petitioner, was, at all times, part of limits of respondent no.4. Annexure-A is the Government Resolution dated 6.7.1956 bearing No.RSD/LS/10/2/ (16A-055-560) issued by the Revenue Department, Government of Saurashtra under Section 63(2) of Bombay Municipal Borough Act, 1925, transferring, for local purpose, to the Jamnagar Borough Municipality, all vacant lands belonging to the Government, except the plots mentioned in the schedule appended to the said resolution land Survey No.8 of Jamnagar was not included to the schedule of the said resolution. It, therefore, appears that by the said resolution Revenue Survey No.8 of Jamnagar stood transferred to Jamnagar Borough Municipality. It, further, appears that on the enactment of Gujarat Municipality Act, 1963, the respondent no.4, when became a Municipality constituted under Section 5 thereof, said land bearing Survey No.8 stood transferred to respondent no.4 for local purposes. Annexure-B to the petition is the circular issued by Revenue Department, State of Gujarat bearing No.LMN-5163-39787 dated 7.9.1970 which inter alia provide that the Collector and the local Revenue Officer should see to it that the land bearing Government Survey numbers and Kharaba numbers should remain in possession of the Government, that a list should be prepared of such lands, that the said lands should be entered as Government lands in Government record and that Municipalities should not dispose of such lands. It is averred in the petition that number of Municipalities of Saurashtra including respondent no.4 challenged the said resolution before this Court. The respondent no.4 filed Special Civil Application No.552 of 1971 challenging the said resolution. During the pendency of the said proceeding, respondent no.4 decided to surrender Revenue Survey No.8 as well as Revenue Survey No.100 and 1385 by accepting proposal from Gujarat Slum Clearance Board for construction of housing accommodation for weaker section. Annexure-C is the resolution passed by General Board of Municipality dated 30.10.1973 whereby Revenue Survey No.8 was surrendered by the Municipality to the Government and to keep separate account of sale proceeds of the said lands and for crediting the same to the Municipality or to Government in whose favour the decision of the Court would come. It appears that the litigation between the Municipality and Government relating to the validity of the Government Resolution dated 7.9.1970 went upto the Supreme Court. However, ultimately, the Government by its Resolution dated 17.1.1980 cancelled the said Resolution dated 7.9.1970 vide Annexure-D to the petition. Vide

Annexure-E to the petition - the Collector, Jamnagar by his letter dated 6.6.1980 forwarded to the President of respondent no.4 Municipality, the original proceeding relating to grant of land of the public road near Summair Club to the 3rd respondent with a request to do the needful. It appears that the 3rd respondent also made an application dated 9.6.1980 to the President of respondent no.4 demanding possession of the said land vide Annexure-F to the petition. The respondent no.1 State Government on 31.1.1981 passed an order of grant of land of 1000 Sq.Ft. for being part of Revenue Survey No.8 of the Jamnagar to the respondent no.3. The Collector, Jamnagar by its order dated 16.4.1981 granted the said land to the 3rd respondent. The petitioner has challenged the said two decisions in this petition.

#. In the affidavit-in-reply filed by the respondent no.2 Collector, Jamnagar it is inter alia pointed out that the land in question is a part of the Government land and it does not vest with the Municipality, paragraph-3 of the affidavit avers that the land in question was never given to the Municipality and therefore there is no question of taking any step to take over the present land from the Municipality. The land is vested with the Government and therefore the Government is empowered to dispose of the land as per the prevailing policy of the State Government. Now, the stand taken by the respondent no.2 does not appear to be well founded and it runs contrary to his own letter dated 6.6.1980 Annexure-E to the petition, whereby the Collector forwarded to the President of respondent no.4 the original proceeding relating to grant of land of public road near Summair Club to 3rd respondent with a request to do the needful. If the land in question is a part of the Government land there was no need to request the respondent no.3 Municipality to do the needful relating to the grant of the land to 3rd respondent. From the records referred above, it is clear that the land Revenue Survey No.8, Jamnagar was transferred to former Jamnagar Borough Municipality, the then Saurashtra Government under its Resolution dated 6.7.1956 and the same stood transferred to the petitioner under Section 279 of the Government Municipalities Act, 1963. At this stage, it is necessary to make a mention about the circular dated 19.2.1981 issued by the Revenue Department, Government of Gujarat, Annexure-G to the petition, pointing out inter alia that all vacant plots situated within the limit of Municipality at the time of Saurashtra Government Resolution of the year 1950 and of the year 1955-56 except those which the Saurashtra Government has reserved according to their schedule to the said Resolutions will

be deemed to have been transferred to the respective Municipalities. Thus, the land in question bearing Revenue Survey No.8 was transferred to the respondent no.4 Municipality and the said fact has been recognised by the Government under its Resolution dated 17.1.1980, Annexure-D as well as circular dated 19.2.1981, Annexure-G to the petition. There is nothing on record which goes to show that the State Government has taken any proceedings under any provision of law for resuming the land in question from the Municipality. In this view of the matter, we are of the view that the Government has no right, power or authority to transfer the land in question to the respondent no.3 or anybody. Learned AGP invited our attention to decision rendered by this Court in the case of Board of Trustees of Port of Kandal Vs. State of Gujarat 1976 GLR page 812, it was the case under Major Port Trusts Act, whereby Central Government constituted Board of Trustees for Port of Kandla and vested the properties in the trustees only for the purpose of administration by not devastating itself of the ownership by the Central Government. In view of the above facts, this Court held that such property continue to be the property of Union of India and are exempted from State taxation. There cannot be any dispute with respect to principle laid down in the said judgment. However, in the present case the State Government has taken two contrary stands viz. the Government being the owner of the land in question since beginning and also having surrender it in favour of the respondent no.4 Municipality. We are of the opinion that the judgment cited by the learned AGP will not give any assistance to the cause of respondent nos.1 and 2. Mr.Oza, by inviting our attention to the Resolution, contended that as the Municipality has surrendered the land in question in favour of the Government was competent to grant the land in favour of respondent no.3, of the General Board of Municipality dated 30.10.1973, Annexure-C to the petition, whereby the Municipality decided to surrender Revenue Survey No.8 in favour of Government for the purpose of construction of the houses for the weaker section of the society. It is not possible to accept the said submission for the simple reason that, there is nothing on record to show that the Government has resumed the land in question. The Municipality could not have surrendered the land by passing a resolution in favor of the State Government without following provision of law. Section 146 (1) of the Gujarat Municipalities Act requires Municipality to invite objections from the residents of area before discontinuing the part of the street of the public street. Since the land in question was surrendered without following the due procedure of

law, the so called surrender by passing resolution is also contrary to law, and therefore illegal. Apart from that, the land in question being the part of public street surrounded by hospitals and S.T.Depot. there is bound to be a heavy traffic. Under the circumstances, in the public interest the land in question could not have been given to private party. It is to be noted that a earlier petition being Special Civil application No.1703 of 1981 was filed by the respondent no.3 Municipality challenging the very act of the Government in granting the land in favour of respondent no.3, however, the same was withdrawn, even though the said petition was admitted, ad interim relief was granted against the Government and Collector restraining them from disposing of or transferring the land in favour of the respondent no.3 or any one else. The very President of respondent no.4 Municipality under whose signature Annexure-C is presented withdrew the petition. Obviously, it would be reasonable to inform that the same was done with a view to oblige MLA and the land in question was given to his wife respondent no.3. In this state of affairs we are of the opinion that the public property cannot be disposed of in such manner, which is against public interest.

#. In view of above we find substance in the petition. The petition is accordingly allowed. We accordingly quash and set aside the impugned order dated 31.1.1981 of the State Government and the order dated 16.4.1981 by the Collector, Jamnagar respondent no.2, granting any part of Revenue Survey No.8 of Jamnagar to the respondent no.3 or to anybody else. The respondents are restrained from granting any part of Revenue Survey No.8 to respondent no.3 or any one else without following the due procedure of law. Rule is made absolute with costs. The request for stay of implementation of this order is rejected.

( D.M. DHARMADHIKARI, C.J.)

( K.R. VYAS, J. )